

1 PAUL, HASTINGS, JANOFSKY & WALKER LLP
2 ELENA R. BACA (SB# 160564)
3 elenabaca@paulhastings.com
4 515 South Flower Street
5 Twenty-Fifth Floor
6 Los Angeles, CA 90071-2228
7 Telephone: (213) 683-6000
8 Facsimile: (213) 627-0705

9 SHANNON S. SEVEY (SB# 229319)
10 shannonsevey@paulhastings.com
11 1117 S. California Avenue
12 Palo Alto, CA 94304-1106
13 Telephone: (650) 320-1800
14 Facsimile: (650) 320-1900

15 Attorneys for Defendants
16 BELMONT VILLAGE SUNNYVALE, INC.,
17 BELMONT CORP, AND BELMONT VILLAGE L.P.

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
14

15 SALVADORE TEMORES,

16 Plaintiff,

17 vs.

18 BELMONT VILLAGE SUNNYVALE,
19 INC., a California Corporation;
20 BELMONT CORP, a Maryland
21 Corporation; BELMONT VILLAGE, and
22 DOES 1-25, inclusive,

23 Defendants.

CASE NO. 5:08-CV-01711-RMV

**JOINT CIVIL CASE MANAGEMENT
STATEMENT**

PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 26(f) and Local Rule 16-9, Plaintiff Salvadore Temores ("Plaintiff") and Defendants Belmont Village, L.P., Belmont Village Sunnyvale, Inc., and BelmontCorp ("Defendants"), by and through their respective counsel, submit this joint report.

1. Jurisdiction and Service

Defendant removed this action under 28 USC §1332 (diversity). Although only two out of three defendants have been formerly served (Defendant Belmont Village, L.P. has not yet been served in this action), Defendants have each appeared in this action and do not contest service.

2. The Parties' Factual Assertions

a. Plaintiff's Claims

Plaintiff asserts claims for (1) "For Willful Violations of California Labor Code §§ 510 and 204 – Failure to Pay All Wages and Overtime Under California Law," (2) "For Willful Violations of California Labor Code §§ 201, 202, and 203 – Failure to Pay Wages Upon Discharge or Quitting; Waiting Time Penalties," (3) "For Willful Violations of California Labor Code § 226.7 – Failure to Afford Mandatory Breaks or Meal Periods as Required by IWC Orders and Labor Code," (4) "For Willful Violations of Labor Code §226 – Failure to Maintain Pay Records; Failure to Make Pay Records Available Upon Request," (5) "For Violations of California Business and Professions Code Sections 17200, *et seq.* Based Upon Defendants' Unfair Business Acts and Practices," and (6) For Declaratory Relief. Specifically, through these claims, Plaintiff contends that he was improperly classified as exempt under the California Labor Code and Industrial Wage Commission ("IWC") Orders, and is therefore entitled to unpaid overtime compensation, waiting time penalties, premiums for the alleged denial of meal and rest periods, interest, and attorneys' fees and costs. Plaintiff brings this action on behalf of himself alone. Plaintiff also seeks equitable and declaratory relief.

b. Defendants' claims and defenses

1 Defendants Belmont Village Sunnyvale, Inc. and BelmontCorp assert that they
2 were not at any time Plaintiff's employer and therefore cannot be liable for the claims Plaintiff
3 brings.

4 Defendants, and each of them, further contend that, by virtue of the duties and
5 responsibilities Plaintiff was assigned to perform and actually did perform, Plaintiff was properly
6 classified as exempt from federal and state overtime provisions, and that Plaintiff is therefore not
7 entitled to the damages he seeks, including without limitation, overtime compensation, waiting
8 time penalties, fees, and costs. Defendants further contend that Plaintiff is not entitled to
9 overtime compensation (or associated penalties, interest, fees, and costs) since he did not work
10 the number of hours he claims and will not be able to adduce credible evidence to support such a
11 contention. Defendants further contend that Plaintiff is not entitled to meal and rest period
12 premiums, as he was provided the opportunity to take, and did take, meal and rest periods as
13 required by law. Defendants further contend that Plaintiff cannot satisfy his burden of
14 establishing an entitlement to equitable or declaratory relief.

15 **c. Principle Factual Issues In Dispute**

16 The principle factual issues in dispute are:

- 17 1. What duties Plaintiff was assigned to perform, and how much time Plaintiff
18 was expected to devote to these duties;
- 19 2. What duties Plaintiff did perform, and how much time Plaintiff devoted to
20 these duties;
- 21 3. Whether Plaintiff satisfactorily performed his duties and responsibilities;
- 22 4. What compensation Plaintiff received;
- 23 5. What hours Plaintiff worked on a daily and weekly basis; and
- 24 6. What meal and rest periods were made available to Plaintiff that he took.
- 25 7. The name of the entity that employed Plaintiff.

26 **3. Legal Issues**

27 The principle legal issues in dispute are:

1 1. Whether the duties Plaintiff was expected to perform and/or did perform
2 satisfy the requirements for exempt status under the California Labor Code and IWC Orders;

3 2. Whether Plaintiff received all compensation due to him, and whether
4 Plaintiff was entitled to all compensation he received; and

5 3. Whether Plaintiff was provided meal and rest periods as required by law.

6 **4. Motions**

7 Plaintiff anticipates filing discovery motions as may become necessary.

8 Defendants anticipate filing a motion for summary judgment and/or adjudication
9 and discovery motions as may become necessary.

10 **5. Amendment of Pleadings**

11 The Parties do not anticipate any amendment of pleadings filed to date.

12 **6. Evidence Preservation**

13 The Parties each represent they have made efforts to preserve documents
14 reasonably believed to be relevant to the extent they are available. The Parties have instructed
15 relevant personnel to preserve, and the Parties have or are in the process of collecting and
16 preserving, documents reasonably believed to be relevant. The Parties do not presently anticipate
17 any concerns regarding evidence preservation.

18 **7. Initial Disclosures**

19 The parties represent that they have made full and timely initial disclosures
20 required by Fed. R. Civ. P. 26.

1 **8. Discovery Plan**

2 **a. Scope and Methods of Discovery**

3 Defendant Belmont Village, L.P. has propounded to Plaintiff requests for
4 production of documents and Plaintiff has responded. Defendant Belmont Village, L.P. has also
5 taken a full day of Plaintiff's deposition.

6 Plaintiff has propounded a request for documents. Plaintiff will serve notices of
7 depositions in the coming week.

8 The Parties do not anticipate that they will need to exceed the discovery limits set
9 forth in the Federal Rules and intend to conduct discovery simultaneously and not according to
10 any defined phases.

11 **b. Production of Electronically-Stored Information**

12 The Parties further agree that, to the extent discovery requires the production of
13 electronically-stored information, the parties may make this production in hard copy or in .tiff
14 format.

15 **c. Privilege Concerns**

16 The Parties do not anticipate any issues related to privileged information that
17 require Court involvement.

18 **d. Protective Order**

19 The Parties discussed the need for a protective order to govern the disclosure of
20 sensitive information in this matter, and agreed to implement the Northern District's model
21 Protective Order.

22 **9. Class Actions**

23 Not applicable.

24 **10. Related Cases**

25 The Parties are not aware of any cases related to this litigation.

26 **11. Relief**

27 Plaintiff seeks compensation in the amount of approximately \$260,000.00 plus
28 reasonable attorney fees and costs.

Defendants do not seek damages in this case and dispute Plaintiff's entitlement to any of the relief he seeks.

12. Settlement and ADR

The Parties have agreed to private mediation with Mr. Mark Rudy on November 13, 2008.

To date, the Parties have not engaged in any settlement discussions.

13. Consent to Magistrate

The Parties do not consent to have a Magistrate Judge conduct all further proceedings including trial and entry of judgment.

14. Other References

The Parties contend that this case is not suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues

The Parties believe they will be able to narrow the issues in this matter after further discovery and other key depositions are completed.

16. Expedited Schedule

The Parties state that this matter is not suitable for handling on an expedited basis.

17. Scheduling

The Parties propose and agree to the following schedule:

<u>EVENT</u>	<u>SUGGESTED DATE</u>
Deadline for Initial Disclosures	May 22, 2008
Last Day to Amend Pleadings by Adding New Claims or New Parties	June 15, 2008
Close of Fact Discovery	October 6, 2008
Plaintiff's Expert Witness Disclosure(s)	November 7, 2008, 5:00 p.m.
Defendants' Expert Witness Disclosure(s)	November 14, 2008, 5:00 p.m.
Close of Expert Discovery	January 9, 2009
Last Day to File Dispositive Motions	December 12, 2009

1 Last Day to File Pretrial Disclosures pursuant to Fed. March 20, 2009

2 R. Civ. Proc. 26(a)(3)(c)

3 Pretrial Conference March 20, 2009

4 Trial April 20, 2009

5
6 **18. Trial**

7 The Parties estimate that the trial in this matter will last between three (3) and five
8 (5) court days, with each side taking half of the allotted time. As Plaintiff has demanded a jury
9 trial, the trial will be by jury (although there may be issues of law which arise that will be tried to
10 the Judge in this matter).

11 **19. Disclosure of Non-party Interested Entities or Persons**

12 Defendants have filed the "Certification of Interested Entities or Persons" pursuant to L.R.
13 3-16 and have no additional interests to report. Defendants' Certification identifies the following
14 entities which (i) have a financial interest in the subject matter in controversy or in a party to the
15 proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be
16 substantially affected by the outcome of this proceeding:

- 17 1. GE Capital Corporation, parent company of Defendant BelmontCorp.
- 18 2. Belmont Three LLC, General Partner of Belmont Village, L.P.
- 19 3. Belmont Two Corporation, former Limited Partner of Belmont Village, L.P.
- 20 4. Belmont Village Holding, LLC, current Limited Partner of Belmont Village, L.P.

21 Plaintiff has not yet filed his "Certification of Interested Entities or Persons."

22 **20. Other Matters**

23 The Parties are not aware of any other matters that would facilitate the just, speedy
24 and inexpensive disposition of this matter.

1 PAUL, HASTINGS, JANOFSKY & WALKER LLP
2 ELENA R. BACA
3 SHANNON S. SEVEY

4 By: /s/
5 Elena R. Baca

6 Attorneys for Defendants
7 BELMONT VILLAGE SUNNYVALE, INC.,
8 BELMONT CORP, AND BELMONT VILLAGE L.P.
9 LADVA LAW FIRM
10 ASHWIN LADVA.

11 By: /s/
12 Ashwin Ladva

13 Attorneys for Plaintiff
14 SALVADORE TEMORES
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